

REMARKS

This is in response to the Office Action that was mailed on April 18, 2006. Non-elected claims 12-16 are cancelled, without prejudice to their presentation in a divisional application. The features of claim 5 are incorporated into claim 1. Claim 5 is accordingly cancelled, without prejudice, and the dependencies of claims 6, 8, and 10 have been adjusted accordingly. No new matter is introduced by this Amendment. Moreover, inasmuch as the Examiner has already thoroughly considered claim 5 on its merits, no new issues are raised by this Amendment. Accordingly, entry of this Amendment – in order to place the application into condition for allowance or into better condition for appeal – is in order. With this Amendment, claims 1 and 4-11 are pending in the application.

THE INVENTION. This invention provides a low-water-activity shelf-stable particulate edible food-grade plasticized composition that has a savory inclusion and that is formulated to be melted onto snack and other foods. The composition comprises: a protein such as sodium caseinate that forms a thermally reversible meltable gel; plasticizer components formulated to provide a fluid yet anhydrous medium which, in combination with water, allows the protein to solubilize, while enabling achievement of a cheese-like, tomatoey, or other desired flavor in the plasticized composition, said plasticizer components comprising a polyol plasticizer such as glycerin and a non-polyol plasticizer such as sodium lactate; a level of an oil such as partially hydrogenated soybean oil sufficient to provide proper texture, mouthfeel, and melt

characteristics to the plasticized composition; and a savory characterizing flavor such as cheese or tomato or the like. Specification, paragraph [0011].

THE PRIOR ART. US 5,935,634 (Gamay) discloses shelf-stable cheese products which are said not to require refrigeration and not to support the proliferation of microorganisms. The compositions described in the Gamay patent contain natural cheese, lactose, and humectants. The humectants may include lactates and polyols. At 40-70% natural cheese, these products carry too much water (> 15%) to meet the low water activity standard ( $A_w < 0.50$ ) of the present invention. It is noted, for instance, that Example 13 in the Gamay patent discloses a water activity of 0.826. Specification, paragraph [0008].

Claims 1, 4-6, and 8-11 were rejected under 35 USC § 103(a) as being unpatentable over Gamay. Claim 7 was rejected under 35 USC § 103(a) as being unpatentable over Gamay in view of US 4,232,050 (Rule). The rejections are respectfully traversed.

The Examiner refers to three portions of the Gamay disclosure in support of the rejection. Office Action, page 4, top.

Lines 53-58 in column 2 of Gamay are cited as allegedly teaching a method for modifying water activity levels. What Gamay actually teaches in lines 53-58 of column 2 is:

Limiting water activity for multiplication of *Staphylococcus aureus* were: with glycerol 0.884 to 0.890, with salt 0.861 to 0.870, and with sodium lactate 0.920 to 0.943. Corresponding ranges for *Salmonella* spp. were: with glycerol 0.918 to 0.923, with salt 0.942 to 0.950, and with sodium lactate 0.943 to 0.951.

It is not clear why the Examiner believes that this suggests a water activity  $A_w$  of less than 0.50.

Lines 12-20 in column 3 of Gamay are cited as allegedly motivating low water activity levels. What Gamay actually teaches (in relevant part) in lines 12-20 of column 3 is:

There is a need for cheese, cheese products and/or cheese compositions meeting various criteria, including the following: (1) low-water activity in order to satisfy food safety measures ....

It is not clear why the Examiner believes that this suggests “a water activity  $A_w$  of less than 0.50” or “a .

Line 49 in column 4 of Gamay is cited as allegedly “naturally lead[ing] one of ordinary skill in the art to encompass an amount of below 0.50”. What Gamay actually teaches in line 49 of column 4 is:

... a water activity less than 0.86.

It is not clear why the Examiner believes that this suggests a water activity  $A_w$  of less than 0.50, as required by Applicants’ claim 1 – much less, a water activity less than or equal to about 0.43, as required by Applicants’ claim 4.

With respect to the features of Applicants’ claim 5 – now incorporated into claim 1 – the Examiner had provided comments on page 5 of the Office Action of December 22, 2005. However, the Examiner failed to demonstrate that Gamay suggests 10-40 weight-% flavor characterizing component or 5-25 weight-% moisture.

Manifestly, the Examiner has failed to state a sustainable rejection based upon the Gamay reference.

CONTACT. If there are any questions concerning this application, please contact Richard Gallagher, Registration No. 28,781, at (703) 205-8008.

In view of the above amendment, applicant believes the pending application is in condition for allowance.

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Respectfully submitted,

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